



DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results of Administrative Review of the Antidumping Duty Order and Notice of Amended Final Results of Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 19, 2021, the U.S. Court of International Trade (the CIT) issued its final judgment in *Husteel Co., Ltd. v. United States*, Consol. Court no. 19-00107, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.).

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2631.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2019, Commerce published its *Final Results* in the 2016-2017 AD administrative review of CWP from Korea.¹ Commerce determined in the *Final Results* that a particular market situation (PMS) existed in Korea with regard to the respondents' purchases of hot-rolled coil, the primary input for the production of subject merchandise and, accordingly, we made an adjustment to the cost of production for the purposes calculating normal value when based upon home market sales and for the purposes of the sales-below-cost test.² Husteel Co., Ltd., Hyundai Steel Company, SeAH Steel Corporation, and NEXTEEL Co., Ltd. appealed Commerce's *Final Results*. On October 19, 2020, the CIT remanded the *Final Results* to Commerce, holding that Commerce does not have statutory authority to address a PMS when determining normal value using home market sales by adjusting the cost of production for purposes of the sales-below-cost test.³

In its First Remand Redetermination, issued in December 2020, to address the PMS, rather than basing normal value on home market sales, Commerce based normal value on constructed value and continued to make PMS adjustments to calculate the respondents' costs when calculating constructed value.⁴ The CIT remanded for a second time, after granting Commerce's request for a partial voluntary remand to reconsider its approach of basing normal value on constructed value and making certain PMS adjustments to address the PMS.⁵

In its Second Remand Redetermination, issued in June 2021, Commerce, under protest, determined normal value once again using home market sales, removed the PMS adjustments it

¹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Results* IDM at Comment 1.

³ See *Husteel Co., Ltd. v. United States*, 476 F. Supp. 3d 1363 (CIT 2020) (*Husteel I*).

⁴ See *Final Results of Redetermination Pursuant to Court Order Husteel Co., Ltd., et al. v. United States*, Court No. 19-00107, Slip Op. 20-147 (CIT October 19, 2020), dated December 17, 2020 (First Remand Redetermination).

⁵ See *Husteel Co., Ltd. v. United States*, 517 F. Supp. 3d 1342, 1348 (CIT 2021) (*Husteel II*). Commerce requested a partial voluntary remand in light of the Court's decision in *Saha Thai II*. See *Saha Thai Steel Pipe Pub. Co. Ltd. v.*

applied in both the *Final Results* and the First Remand Redetermination, and recalculated the dumping margins.⁶ The CIT sustained Commerce’s Second Remand Redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 19, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) as follows:

Company	Weighted Average Dumping Margin (percent)
Husteel Co., Ltd.	6.44
Hyundai Steel Company	4.82
Non-Examined Companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.)	5.63

Amended Cash Deposit Rates

United States, 487 F. Supp. 3d 1323 (CIT 2020) (*Saha Thai II*). In that case, the CIT found that “Commerce’s exclusion of home market sales due to distortions in the cost of production is not authorized by statute,” and found that “Commerce had not met the precondition of calculating constructed value when it made a particular market situation determination based on distorted cost of production.” *Saha Thai II*, 487 F. Supp. 3d at 1331-34. The methodology that the Court rejected in *Saha Thai II* was the same methodology Commerce had applied in the First Remand Redetermination.

⁶ See Final Results of Redetermination Pursuant to Court Order *Husteel Co., Ltd., et al. v. United States*, Court No. 19-00107, Slip Op. 21-51 (CIT May 3, 2021), dated June 22, 2021 (Second Remand Redetermination).

⁷ See *Husteel Co., Ltd. v. United States*, Consol. Court No. 19-00107, Slip Op. 21-147 (CIT October 19, 2021) (*Husteel III*);

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Because Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review,¹⁰ we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Husteel Co., Ltd., Hyundai Steel Company or Hyundai Steel (Pipe Division), NEXTEEL Co., Ltd., or SeAH Steel Corporation, and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2016, through October 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Husteel Co., Ltd., Hyundai Steel Company, and the non-examined companies (SeAH Steel Corporation and NEXTEEL Co., Ltd.) in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,¹¹ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(b), and 777(i)(1) of the Act.

¹⁰ See, e.g., *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 53631 (September 28, 2021).

¹¹ See 19 CFR 351.106(c)(2).

Dated: October 22, 2021

Ryan Majerus,

Deputy Assistant Secretary

for Policy and Negotiations,

performing the non-exclusive functions and duties of the

Assistant Secretary for Enforcement and Compliance.

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